

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

DEMETRIUS L. HARVEY,

No. C 07-01681 SBA

Plaintiff,

ORDER

CITY OF OAKLAND

[Docket No. 64]

Defendant.

REQUEST BEFORE THE COURT

Before the Court is Plaintiff's "Request for Volunteer Counsel -- Federal Pro Bono Project." [Docket No. 64]. For the following reasons, the Court DENIES the Motion without prejudice.

BACKGROUND

On March 19, 2007, Plaintiff filed a Complaint pursuant to 42 U.S.C. § 1983 in which he alleges a violation of his Fourth and Fourteenth Amendment rights based on having been detained for more than 10 days in custody after an allegedly erroneous arrest.

Plaintiff's Application to Proceed *In Forma Pauperis* ("IFP") was granted on April 3, 2007. [Docket No. 4]. Following Judge Hamilton's recusal, the case was reassigned to this Court on February 21, 2008. [Docket No. 55].

On August 1, 2008, Plaintiff submitted an unverified letter requesting volunteer counsel through the Federal Pro Bono Project (the “Project”). [Docket No. 64]. In the letter, Plaintiff explains that he meets the requirements under the Project: he is *pro se*, he has IFP status and he has been unsuccessful in retaining an attorney.

Specifically, Plaintiff states that he has “contacted at least five (5) attorneys, some who wanted to know if [he] was harmed physically by the police officers, others were not taking any more cases at this time, and the ones from Fresno said it would be too costly for them to travel. Plus some wanted up-front money to look into the case in which [he] still does not have.” Plaintiff believes that his claim is meritorious and that he requires legal assistance in order to conduct costly

1 discovery.

2

3 **LEGAL STANDARD**

4 An indigent litigant who may lose his or her physical liberty, if they lose a litigation, has a
5 right to the appointment of counsel. *See Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 25 (1981). In,
6 contrast, there is no statutory right to counsel in civil cases. *Rand v. Rowland*, 113 F.3d 1520, 1525
7 (9th Cir. 1997). However, under 28 U.S.C. § 1915(e)(1), a district court has the discretion to
8 appoint counsel to represent an “indigent civil litigant,” but only under “exceptional circumstances.”
9 *Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980).

10 Further, the Court will not consider a referral or appointment unless a (1) pro per litigant, (2)
11 proceeding *in forma pauperis*, (3) has failed in their reasonable efforts to retain private counsel,
12 including but not limited to contacting a California State Bar-approved lawyer referral service.
13 Guidelines for Fed. Pro Bono Project of N.D. Cal. (the “Guidelines”) ¶ 1.

14

ANALYSIS

15 In this case, Plaintiff is not faced with loss of his physical liberty should he lose, so he is not
16 entitled to an appointed counsel under *Lassiter*. The Court will consider, however, whether he
17 meets the requirements of the Guidelines. Plaintiff meets the first two Guidelines requirements
18 because he is a pro se litigant with IFP status.

19 Plaintiff does not, however, meet the third Guidelines requirement based on his submission.
20 First, the plaintiff does not present his description of attempts to secure counsel in a sworn petition.
21 Second, Plaintiff has not demonstrated he has used “reasonable (but unsuccessful) efforts to . . .
22 locate counsel through a California State Bar-approved lawyer referral service.” This is a critical
23 requirement for a litigant who wishes the Court to refer it to the Project for a volunteer attorney, and
24 the plaintiff has not met it.

25 Accordingly, the Court DENIES without prejudice the plaintiff’s “Request for Volunteer
26 Counsel -- Federal Pro Bono Project” and grants Plaintiff leave to amend his request upon
27 complying with the Guidelines.

28

1 IT IS SO ORDERED.
2
3

September 3, 2008


4 Saundra Brown Armstrong
5 United States District Judge
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 HARVEY et al,

5 Plaintiff,

Case Number: CV07-01681 SBA

6 v.

7 CITY OF OAKLAND et al,

8 Defendant.
_____/

9
10 **CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

11 That on September 4, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
located in the Clerk's office.

13

14

15 Demetrius Harvey
16 360 South Helm Avenue
Fresno, CA 93727

17 Dated: September 4, 2008

18 Richard W. Wiking, Clerk
By: LISA R CLARK, Deputy Clerk

19

20

21

22

23

24

25

26

27

28